

March 28, 2022

VIA ELECTRONIC SUBMISSION

Re: **Freedom of Information Act Request for Tebuconazole Meeting Materials**

Dear FOIA Officers:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and 40 C.F.R. § 2.100 *et seq.*, I am requesting the following U.S. Environmental Protection Agency (“EPA” or the “Agency”) records:

1. Email correspondence, including attachments, from Mr. Jonathan Williams in EPA’s Office of Pesticide Programs, relating to Generic Data Call-In (GDCI) 128997-1598 for tebuconazole. This specifically includes, but is not limited to, an email from Mr. Williams to Mr. Phillip Ross with the subject line “RE: Information Requested About Tebuconazole GDCI,” dated August 15, 2018.¹
2. All personal notes, meeting minutes, and any memoranda prepared by the Agency under 40 C.F.R. § 155.30, relating to the August 14, 2018 meeting between EPA and the “United Phosphorus Inc. cost-sharing consortium” including, but not limited to, any OneNote files.

This request relates to FOIA Request No. EPA-2019-00282 that Bayer CropScience LP (“Bayer”) submitted on October 9, 2018, seeking meeting minutes relating to GDCI 128997-1598. After waiting more than three years, EPA finally produced 21 records including an email from Mr. Williams with the subject line “RE: Information Requested About Tebuconazole GDCI.” However, EPA failed to produce the attachments to that email. Bayer then filed an administrative appeal requesting those agency records, after which EPA erroneously determined that the email and attachments were “not within the scope of [the] request.”² In rejecting the

¹ The attorney-client privilege does not extend to these materials because the email correspondence and attached OneNote files are not communications seeking legal advice within the scope of the privilege. *See Upjohn Co. v. United States*, 449 U.S. 383, 395-96 (1981) (“[T]he protection of the privilege extends only to communications and not to facts.”).

² Appeal No. EPA- 2022-002108 at 2.

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appeal, the Agency stated: “You remain free to file a new FOIA request for other records you may seek.”³

Although we disagree with EPA’s assertion that the requested records were outside the scope of Bayer’s initial request, we are now filing this new FOIA request. Given the narrow scope of this follow-up request and EPA’s acknowledgement in its February 18, 2022 letter that it recently reviewed at least some of the requested records to reach its final determination, we trust the Agency will promptly respond to this FOIA request within 20 working days as required by 40 C.F.R. § 2.104.

I look forward to receiving records promptly and agree to accept production of records on a rolling basis as they become available. I understand that I may be charged for the Agency’s production of records and I agree to tender the total cost of production upon receipt of cost details. I would prefer that all documents be provided electronically and can provide a file transfer site if that would facilitate delivery of the documents.

Please contact me directly by email at dschulson@bdlaw.com or by phone at (202) 789-6007 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Daniel B. Schulson

³ *Id.*